

MINUTES

INSOLVENCY LAW COMMITTEE OF THE BUSINESS LAW SECTION OF THE STATE BAR OF CALIFORNIA

February 21, 2002

The monthly meeting of the Insolvency Law Committee of the Business Law Section of the State Bar of California was held on February 21, 2002, at 10:00 a.m., at the Renaissance Los Angeles Hotel Airport, located at 9620 Airport Boulevard, Los Angeles, CA.

The following members of the Committee were present at the meeting:

Peter Bronson
Julia Gibbs
Rob Harris
Meredith Jackson
Sandra Lavigna
Larry Peitzman
Kathy Phelps
Tracy Schweitzer

The following members appeared by telephone.

David Bertenthal
Bruce Emard
Lynn Ernce
Radmilla Fulton
David Honig
Steven Johnson
Perry Landsberg
Ben Murphy
Tom Phinney
Chris Rigsby
Geraldine Valdez

Rob Harris called the meeting to order at approximately 10:02 a.m.

Meeting packet - Ben should follow up with e-mail that packet has been sent to make sure everyone received it.

Approval of Minutes

The minutes of the January 10, 2002 meeting were unanimously approved.

Program for Third Annual Spring Meeting (Business Law and IP sections) - La Costa, May 2002 (same weekend as CBF annual conference)

Catapult related topic (Coordinator- Kathy Phelps)

Confirmed Program for Winter Section Institute - San Diego, January 2002

Bankruptcy Reform Legislation: Forecasting a Cold Winter for Debtors?
(Coordinator - Dean Kirby) - 2 hours

Program went over well, good attendance.

Panel: Dean Kirby;

Rob Harris;

Radmilla Fulton - Consumer Provisions - Did an excellent job of explaining what reform would mean to attorneys and their practices.

Steve Johnson

Possible Coordination with the Corporations Committee on Corporate Conversion Bill (Peter Bronson)

Purpose of bill: Make it easier for corporate entities to change their form, *i.e.*, partnership to LLC.

Who should have to receive notice? Corporate Committee - no notice; if notice, very limited.

Failure to give notice - penalty.

Meredith Jackson - Executive Committee: Executive Committee taking no action pending further discussion. Meredith wants to give Executive Committee this Committee's view.

Executive Committee - \$1,000 penalty for failure to comply with notice provisions.

Executive Committee will probably oppose unless there is an aggregate cap on penalty for failure to comply.

Notice provisions - Notice within 90 days to all known creditors and claimants.

Discussion - Should notice only be for general partnerships who convert.

Neil Wertlieb appeared by phone, Chair of Corporations Committee

Senate Judiciary Committee imposed requirements of notice to creditors and claimants. Failure to notice does not affect validity of conversion.

Corporations Committee troubled by notice requirement imposed by the Judiciary Committee because a business can change, move, without notice. Also troubled by no penalty for failure to notice.

Corp. Committee views the notice requirement as one that will keep entities from converting or cause them to leave California.

Bill provides that conversion does not effect liability incurred prior to conversion.

Why is legislation good idea?

- A number of states have considered and are enacting conversion legislation.

- Allows business entities to adapt to changing circumstances.

- Conversion allows entity to be the same entity just changing form of original.

Monetary penalty for failure to comply with notice requirement. \$50-\$100 fine per creditor/claimant up to \$5,000.

Senate Judiciary Commission seems generally concerned about creditors knowing who their borrowers are and the form of their business.

Discussion by Insolvency Committee: Support taking out notice requirement if there is specific provision that general partner continues to have liability to those who rely on the liability of general partner.

General Partnership converts to LLC or corporation.

- Liable for events before conversion

- Limits liability under certain circumstances after passage of time

Feedback from ILC by next month.

Larry - rebuttable presumption of reliance for 90 days, thereafter burden shifts to creditor to prove reliance.

What is current law of partner disassociating from partnership?

Judy and Larry to work language to alleviate concern for creditors who rely on general partner.

Meredith to check with Larry Doyle regarding deadline for amendment.

Executive Committee Constituency/Outreach Project (Rob Harris)

Continuing project regarding letter Roland Tucker sent out; idea to create larger group of people who are interested in insolvency law topics attempt to try to tie insolvency lawyers together. Roland Tucker has goal of instant e-news letter.

Web Site Status Report (Steve Johnson, Rob Harris)

Program materials from January - Winter Section Institute need to be posted.

Post News Update

- Electronic filings in Central; Sacramento Pilot Program; Northern District Pilot Program

- Central District

Progress Reports on Current Projects

- a) Legislation to Automatically Re-index California Exemptions in Amounts and at Times Periodically Established Under the Bankruptcy Code (Rob Harris)

Unanimous vote last meeting ready to go to Meredith and Executive Committee.

b) CLRC Items of Interest

i. Assignment for Benefit of Creditors (Geraldine Valdez)

ii. Municipal Bankruptcies (Ben Murphy) Ben - no change.

California state law still refers to Bankruptcy Act, needs technical fix to allow municipalities to file Chapter IX. Nothing the Committee needs to do until there is affirmative legislation. Remove from agenda until affirmative legislation.

iii. Attorneys Fees to Prevailing Parties (Tom Phinney)

Tom - Changes still being considered. No formal proposal yet. Remove from agenda until there is formal proposal. Tom will monitor.

c) Coordinate with LABF on proposing new procedures for California Bankruptcy Courts to become more user friendly. (Ben Murphy, Marc Cohen)

Effort for standardization of local practice.

-Post News blurb of order on Committee site - proposed order.

d) Model Real Estate Order

Order has Marc's firm name on it that needs to be removed

-Order already on website

New Projects

a) ILC Comment re Attorney Liability Provisions of the Bankruptcy Bill (Judy Gibbs)

Senate Judiciary Committee - No meetings scheduled. Judy has proposed memorandum to send out to Committee after this Committee approves, it will go to Meredith.

b) Proposal to amend the provisions in the Bankruptcy Code for the netting of financial contracts (Judy, Rob and Ben Murphy)

Appears major concern is with asset securitization. Should this Committee comment?

Netting - No Comment desired by Committee. Remove from agenda.

Netting has asset securitization hidden in it. We should follow to make sure momentum does not pick up.

Meredith will talk to UCC.

c) Petition Preparer issues (Volunteer?)

Summary of report - Steve Johnson - very comprehensive report.

Recommendations -

1. Referrals be made to state agencies for unlawful practice of law.
2. Free legal service for people intending to file bankruptcy call for referral information to be increased. Practitioners should continue to be involved in low level consumer cases.
3. Steve trying to talk to Maureen Tighe to see if there is something more concrete this Committee can do.

Education, Programs and Publications

- a) Article for Business Law News? (We have been asked to have the final draft of an article by June 30, 2002)

Tom will submit article regarding trustees pursuit of alter ego claims.

Legislative Liaison Report (Lynn Ernce)

Lynn - Finance Netting Securitization issue.

Extra

Annual Meeting: ILC Panels

Tom/Judy - "Impact on state court litigant when opponent files bankruptcy."

Peter/Geraldine - "Bankruptcy: What every California lawyer needs to know."

Speaker deadline - April 2002

Meredith Jackson - Legislative process

Comments should include concrete, practical examples.

COD Resolutions - short time frame to comment. Often proposed by people who do not have specialized knowledge in the substantive area of law.

Affirm legislation proposals - August-September - review for technicalities.